HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.20737 OF 2007

Between:

Dr. Pinna N.R.

. . .Petitioner

AND

Canara Bank and others

. . .Respondents

:: ORDER ::

Counsel for the petitioner : Shri S.Krishna Murthy

Counsel for respondent No.1 : Shri Deepak Bhattacharjee

29th October, 2007

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Per G.S.SINGHVI, CJ

Feeling dissatisfied with the conditional relief granted by the Debts Recovery Tribunal at Hyderabad (for short, 'the Tribunal') in I.A. No. 501 of 2005 in M.A.I.R.No.140 of 2005 in I.A.No.464 of 2004 in R.P.No.15 of 2004 (O.A.No. 849 of 2001), the petitioner has filed this petition under Article 226 of the Constitution of India.

A perusal of the record shows that the application jointly filed by respondent Nos. 1, 2 and 3 for recovery of Rs.23,97,11,499-72 Ps. under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'the Act'), which was registered as O.A.No.849 of 2001 was allowed by the Tribunal on 17.11.2003 and recovery certificate was issued for Rs.34,66,55,423-72 Ps.

The petitioner, who was one of the Directors of the borrower-M/s Midwest Iron and Steel Company Limited (respondent No.4 herein) and who gave security of his personal assets for repayment of loan taken by respondent No.4, filed miscellaneous petition for setting aside order dated 17.11.2003 passed by the Tribunal. The same was registered as M.A.I.R.No.81 of 2004. He also filed I.A.No.464 of 2004 for condonation of 149 days' delay in filing M.A.I.R.No.81 of 2004 and I.A. No. 465 of 2004 for stay of the recovery proceedings. I.A.No. 465 of 2004 was dismissed in default on 06.04.2005. The petitioner then filed M.A.I.R.No.140 of 2005 for setting aside the dismissal order. He also filed I.A.No. 501 of 2005 for condonation of 11 days' delay in filing M.A.I.R.No. 140 of 2005.

In the applications filed by him, the petitioner claimed that the

borrower had been declared as sick industrial company and on a reference made by the Board for Industrial and Financial Reconstruction, the High Court of Andhra Pradesh passed winding up order dated 13.06.2004 in R.C.C. No. 10 of 2001. He averred that dismissal of the miscellaneous applications had been occasioned because he remained hospitalized due to heart attack and could not attend the proceedings before the Tribunal.

Respondent No.1 contested the application and pleaded that the cause shown by the petitioner was not genuine, that no one had appeared on behalf of the petitioner on 06.04.2005 and that there was no justification for condonation of delay.

On a consideration of the facts brought before it, the Tribunal allowed I.A.No.501 of 2005 and condoned the delay in filing M.A.I.R.No.140 of 2005 for setting aside order dated 06.04.2005 subject to the condition of depositing of one-tenth of the O.A. claim within fifteen days. The relevant portions of the order of the Tribunal are extracted below:

" A perusal of records reveals the above O.A. was filed by respondents 1, 2 & 3 banks for recovery of Rs. 23,97,11,499-72 Ps. from the 4th respondent and the petitioner herein in the year 2001. The O.A. was finally allowed with costs on 17.11.2003 and Recovery Certificate was issued for recovery of Rs. 34,66,55,423-72 Ps. from the Certified Debtors. While so the petitioner herein fled two petitions one in I.A.No. 465 of 2004 on 19.4.2004 seeking stay of recovery proceedings and another in I.A.No. 464 of 2004 seeking condonation of delay of 149 days in filing M.A.I.R.No.81 of 2004 for setting aside the order passed in O.A. on 17.11.2003. The said petitioners were dismissed as per orders dt. 6.4.2005 as there was no representation for the petitioner.

While the matters stood thus, the petitioner herein filed M.A.I.R.No. 140 of 2005 for setting aside the orders dt. 6.4.2005 passed in I.A.No. 464 of 2004 along with the petition seeking condonation of delay.

As can be seen from the records, the petitioner is negligent in prosecuting his case for the reasons that the petitioner having filed the petitions earlier seeking condonation of delay and for setting aside the orders

passed in the O.A. did not represent the matter and allowed the Tribunal to dismiss the said petitions on 6.4.2005. The petitioner again caused delay in filing M.A.I.R.No. 140 of 2005 for setting aside the orders dt. 6.4.2005 passed in I.A.No. 464 of 2005.

A similar petition in I.A.No. 502 of 2005 filed in the above O.A. is allowed today on the condition that the petitioner shall deposit 1/10th of OA claim within 15 days from the date of the passing of the orders in the said I.A. In these circumstances, separate orders need not be passed in this petition at this stage. Call on 28.08.2007 along with I.A.No.502 of 2005 for passing appropriate orders."

Shri S. Krishna Murthy, learned counsel for the petitioner strongly relied on the averments contained in additional affidavit dated 23.10.2007 of the petitioner and docket order dated 08.08.2007 passed by the Tribunal in M.A.No.100 of 2005 in O.A.No.120 of 2002 and argued that the condition imposed in the impugned order for deposit of one-tenth of the O.A. claim should be declared arbitrary and quashed. Shri Murthy submitted that when the Tribunal restored similar proceedings on payment of cost of Rs.300/- only, there was no justification to impose the condition of deposit of 1/10th of the O.A. claim for setting aside order dated 06.04.2005.

Shri Deepak Bhattacharjee, learned counsel for respondent No.1 argued that the proceedings of O.A.No.120 of 2002 have nothing to do with O.A.No.849 of 2001 and the order passed in M.A.No.100 of 2005 cannot be made basis for relieving the petitioner of the obligation to pay even one-tenth of the amount specified in the original application.

We have considered the respective submissions. Undisputedly, as on 17.11.2003, a sum of Rs.34,66,55,423-72 Ps. was due from the borrower company of which the petitioner was a Director. As on today, a sum of more than Rs.45 crores is payable by the borrower and guarantors including the petitioner herein. Therefore, the discretion exercised by the Tribunal in condoning the delay caused in filing of M.A.I.R.No.140 of 2005 cannot be termed as arbitrary or perverse so

as to warrant interference by the High Court under 226 of the Constitution of India. The petitioner belongs to the creed of persons who take huge loans or avail financial facilities from the banks and other public financial institutions for the purpose of establishing industrial units, do not repay the amount of loan etc., and then drag the banks etc. in litigation with a view to avoid payment of their dues. In such matters, the superior Courts will always be extremely loath to interfere with the discretion exercised by the adjudicating bodies created under the special Acts like the 1993 Act.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P.No. 26879 of 2007 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, CJ

29th October, 2007

G.ROHINI, J

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